



FEDERAL BAR ASSOCIATION

BANKRUPTCY SECTION NEWSLETTER
JANUARY, 2003

AN ANALYSIS OF EXCESSIVE HOUSING COSTS UNDER 11 U.S.C. SECTION 707(b) By MICHAEL V. MAGGIO¹

I. Introduction

A Chapter 7 debtor's housing costs may be so excessive as to constitute a substantial abuse of the Bankruptcy Code sufficient to merit dismissal of the case under 11 U.S.C. Section 707(b). This article will discuss the basis for dismissal under the Code language and the case law, and then will briefly explain the facts of some of the motions to dismiss filed by the United States Trustee in this District.

II. Under Section 707(b) and the Relevant Case law, Excessive Housing Costs May Constitute "Substantial Abuse"

Section 707(b) of the Bankruptcy Code provides in part as follows:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

The term "substantial abuse" is not defined by the Bankruptcy Code; Congress left this task to the courts. *In re Krohn*, 886 F.2d 123, 126 (6th Cir. 1989). In *Krohn*, the Sixth Circuit adopted a "totality of the circumstances" test for determining whether the granting of a discharge would constitute a substantial abuse. The Sixth Circuit held that "Substantial abuse can be predicated upon either lack of honesty or want of need." *Id.*

The United States Trustee has argued that debtors who have excessive housing costs meet the "want of need" ground for dismissal under Section 707(b).

In assessing whether a debtor was in need, *Krohn* held that a court may look, *inter alia*, at whether the debtor's expenses can be reduced significantly without depriving the debtor of adequate food, clothing, shelter and other necessities. *Krohn*, 886 F.2d 126 to 127. Therefore, it is clear from *Krohn* that a debtor's lack of need alone may be sufficient to support dismissal under Section 707(b), and that in making this analysis the Court may "significantly" reduce the debtor's expenses so long as that can be done without depriving the debtor of "adequate" shelter.

In deciding a motion to dismiss under Section 707(b), the "court's task is to hypothesize the debtor's filing a Chapter 13 and then to apply the 'projected disposable income' test of Section 1325(b)(2)." *In re Stallman*, 198 B.R. 491, 495 (Bankr. W.D.Mich. 1996). Confirmation of a Chapter 13 plan requires that the debtor devote all of the debtor's projected disposable income to payments to the plan for three years. 11 U.S.C. Section 1325(b)(1)(B). The Bankruptcy Code defines "disposable income" as income which is received by the debtor and which is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor. 11 U.S.C. Section 1325(b)(2)(A). In determining the amount of disposable income that a debtor would have available to fund a hypothetical Chapter 13 plan under Section 707(b), the Court is not bound by the debtor's actual expenses; instead the Court may correctly reduce those expenses to those reasonable for the provision of adequate food, clothing, shelter and other necessities and to then forecast a repayment plan based on the reduced expenses. *Krohn*, 886 F.2d at 127; *Wilson v. United States Trustee (In re Wilson)*, 125 B.R. 742, 746 (W.D. Mich. 1990); *In re Kitson*, 65 B.R. 615 (Bankr. E.D. N.C. 1986) (court declined to confirm Chapter 13 plan that allowed debtor to spend \$1,677 per month in mortgage payments for a family of four when court believed that a family of four could rent adequate housing in the area for \$1,000 per month).

(Continued on page 2)

Inside this issue:

Article on 707(b)

Important dates

People & changes

Statistics

Clerk's office issues

Photos from summer

Recent Cases

FBA News

IMPORTANT DATES:

MIDWINTER EVENT: FEBRUARY 27, 2003, 5:00 P.M., PENN CLUB (TENTATIVE)

FBA STEERING COMM.: JANUARY 24, 2003, 12 NOON, PENN CLUB.

CONSUMER BANKRUPTCY COALITION MEETINGS: SECOND FRIDAY OF EVERY OTHER MONTH @ 9:00 A.M. @ FIFTH THIRD BANK, EAST PARIS ROAD, GRAND RAPIDS. CALL JOHN PIGGINS OR JILL @ (616) 447-1800 FOR DETAILS, TO GET ON THE MAILING LIST AND TO VERIFY MEETING.

15TH ANNUAL FBA BANKRUPTCY SEMINAR: AUGUST 7-9, 2003: @ TRAVERSE CITY PARK PLACE HOTEL

Something missing? Let us know about other dates!

(Continued from page 1)

Shelter is a necessity, but under the Section 1325(b)(2)(A) test of the hypothetical Chapter 13, the amounts a debtor may spend on necessities are limited to those amounts which are reasonably necessary for the support and maintenance of the debtor or a dependent of the debtor. "Excessive amounts allocated to nondiscretionary expenses also constitute discretionary spending." *In re Beckel*, 268 B.R. 179, 183 (Bankr. N.D. Iowa 2001). As the Sixth Circuit stated in *Krohn*, debtors are limited to "adequate" shelter.

In *Beckel*, the Court dismissed a case under Section 707(b) in part because the debtors, with monthly net income of \$4,693.87, wanted to reaffirm two mortgages with monthly payments totaling \$1,207 for a house they had no equity in. 268 B.R. 181 to 182. The Court also found other expenses to be high. The *Beckel* court reasoned that "Chapter 13 debtors are not required to adopt a totally spartan existence; neither are they permitted to continue an extravagant lifestyle at the expense of creditors... Courts apply Section 1325(b) to allow debtors to maintain a reasonable lifestyle while simultaneously insuring they make a serious effort to pay creditors by eliminating unnecessary and unreasonable expenses... This section contemplates some sacrifices or alteration in prepetition consumption levels by debtors, while allowing them to sustain basic needs not related to their former lifestyles." (Citations omitted.) 268 B.R. at 183.

In *United States Trustee v. Duncan* (*In re Duncan*), 201 B.R. 889 (Bankr. W.D. Pa. 1996), the debtor (who had a monthly net family income of \$6,200) budgeted \$4,550 per month on Schedule J for a mortgage payment and \$500 for electricity and heat. The debtor's house was listed as worth \$375,000, but the debtor had written letters in which he valued the property at \$483,000 to \$500,000. The property was subject to mortgages totaling \$351,487.82. Therefore, the debtor had equity of at least \$23,512.18. The court dismissed the Chapter 7 petition under Section 707(b), finding that it would be morally and legally unconscionable to allow the debtor to devote 81% of his household's net income to the mortgage and one utility bill while seeking to discharge \$224,080.95 in general unsecured debt. In *Duncan* the United States Trustee offered no proposal of what would be a reasonable amount to spend on housing, but the court was certain that the debtor's housing expenditure could be conservatively reduced by 50% to 60% without depriving the debtor and his household of adequate shelter, thereby freeing up \$109,000 for the repayment of creditors. The Court granted the motion to dismiss because to allow the debtor to obtain a discharge would allow the debtor "to extinguish his obligations without first making a reasonable effort to fulfill them." 201 B.R. at 896 (emphasis as in *Duncan*, citing *In re Hudson*, 56 B.R. 415, 419 (Bankr. N.D. Ohio 1985)).

In *In re Elliott*, 2002 WL 970410 (Bankr. N.D. Iowa May 3, 2002), the court considered a motion to dismiss under Section 707(b) in a case where the debtors had combined income of \$4,837.79 per month and expenses of \$4,895 per month. The debtors owned a house valued at \$200,000 and subject to \$211,000 in liens. The debtors budgeted \$1,911 for mortgage payment, \$181 for electricity and heating fuel, \$33 for house insurance, and \$178 for real estate taxes. These housing costs totaled \$2,405 per month. The *Elliott* court found that if the debtors reduced their housing expenditure, the debtors would be able to devote \$1,467 per month to the hypothetical Chapter 13, which would repay 82% of the scheduled unsecured debts.

In *Walton v. Smith* (*In re Smith*), 229 B.R. 895 (Bankr. S. D. Ga. 1997) the Smiths owned a house valued at \$212,000 to \$215,000. The total secured debt was \$207,806, which may have included vehicle debt. The Smiths budgeted \$1,695 for the mortgage payment. The Smiths purchased the house in 1990 when they had a much higher income. In 1993 Mr. Smith's former employer terminated Mr. Smith, and his income fell. In 1996 the Smiths filed their petition for relief under Chapter 7. The *Smith* court dismissed the case under Section 707(a), writing that the debtors "are attempting to force their unsecured creditors to absorb the expenses of the lifestyle they have maintained but could no longer afford... the Debtors' maintaining their current home at the expense of their unsecured creditors and now attempting to discharge that accumulated unsecured debt constitutes bad faith." The *Smith* court also dismissed the case under Section 707(b), writing, "The petition filing was caused by the Debtors' failure in the three years prior to this filing to reduce their expenses and live within their means, not by Mr. Smith's employment termination." 229 B.R. at 898 to 899. The *Smith* court found that the \$1,695 mortgage payment, as well as a \$571 lease on a Lexus, constituted expenses which were not reasonable and necessary expenses for the Smiths. The *Smith* court reduced their automobile lease by \$100 to the level of their prior automobile lease, and reduced the Smiths' housing costs to \$1,000.²

There are at least two cases where the courts declined to dismiss a case due to the debtor's housing costs: *In re Wright*, 276 B.R. 399 (Bankr. W.D. Pa. 2002) (decided in reliance upon *In re Green*, 934 F.2d 568 (4th Cir. 1991)); and *In re DeGross*, 272 B.R. 309 (Bankr. M.D. Fla. 2001). However, these cases can be distinguished. As neither of these cases was decided in the Sixth Circuit, the courts were not bound by *Krohn*. Each case held that the debtor's ability to repay debts is a primary concern, but not necessarily dispositive. *DeGross* rejected "the contention that ability to pay, standing alone, is sufficient to warrant dismissal." 272 B.R. 313. This clearly is not the holding of *Krohn*, which stated that the ability to repay debts out of future earnings "alone may be sufficient to warrant dismissal." 886 F.2d at 126.

III. The Western District Of Michigan Cases

The United States Trustee has filed many motions to dismiss under Section 707(b) in the Western District of Michigan in which the United States Trustee has alleged that the debtors' housing costs were too high. The following cases represent a small sampling of those cases.

In *In re Kulp*, Case No. GK01-05326, the debtors had monthly net income of \$4,284 and expenses of \$5,503. The United States Trustee filed a 707(b) motion that pointed out, *inter alia*, that the debtors owned a house valued at \$135,000, which was subject to three mortgages which totaled \$159,000, and that the monthly mortgage payment appeared to be \$2,019. After retaining new counsel the debtors converted to Chapter 13 before the motion to dismiss was heard, and the motion to dismiss was withdrawn.

In *In re Bernth*, Case No. HG01-07508 the motion to dismiss pointed out, *inter alia*, that the debtor was making mortgage payments of \$2,411 on a \$149,200 house subject to \$221,920 in mortgages. After a status conference with the Court, the debtors consented to the dismissal of the petition.

(Continued on page 3)

(Continued from page 2)

In *In re Wells*, Case No. HG01-08667, the debtors rented an apartment in Michigan year round and were purchasing a mobile home in Florida. The debtors claimed that it was medically necessary to spend the winter in Florida. The Court found that if the debtors rented housing instead of buying in Florida they could still fund a 5% to 6% Chapter 13 plan. The case was dismissed.³

In *In re Morgan*, Case No. HG02-00019 the debtors spent \$1,820 per month on house with little equity, intended to reaffirm a \$218 per month trailer with no equity and exempted a \$415,000 profit sharing plan. The debtors consented to dismissal of the case upon the United States Trustee's motion without a hearing.

In *In re Cox*, Case No. SG02-03804, the debtors had net income of \$5,300 and were paying \$2,160 in mortgage payments on a house valued at \$275,000 and subject to liens of \$243,587; if the debtors rejected the house and rented for \$1,000 per month they could have funded a 26% plan. After a pretrial conference with the Court the debtors consented to dismissal of the case.

In *In re McTaggart*, Case No. SG02-01755, the debtors were paying \$2,620 per month on mortgages of \$384,720 on a house valued at \$406,500. After a pretrial conference with the Court the debtors consented to dismissal of the case.⁴

IV. Conclusion

As can be seen from the sampling of cases above, there is no set formula which the Court applies. Indeed, the United States Trustee has successfully filed other motions in which the motion has alleged that the housing costs, although less extreme than those set forth above, were excessive, and, when taken with other factors in the case, justified dismissal. The lesson of these cases is that debtors cannot spend more than is reasonably necessary to obtain adequate housing and at the same time achieve a discharge of their unsecured debts.

1 Michael V. Maggio, B.A., University of Dallas 1980; J.D. University of Notre Dame Law School 1984; served as law clerk to the Honorable Laurence E. Howard, Chief Judge of the United States Bankruptcy Court for the Western District of Michigan from 1984 to 1989, and has served as a trial attorney for the United States Trustee in the Western District of Michigan since 1989. The views expressed in this article are his personal opinions and do not necessarily reflect those of the United States Trustee.

2 There are a number of other cases that have found the debtor's housing costs to be one of several factors to justify a dismissal for substantial abuse under Section 707(b). *United States Trustee v. Bacco (In re Bacco)*, 160 B.R. 283 (Bankr. W.D. Pa. 1993)(debtor spent \$1,075.21 in mortgage payments and payments on home improvement loans, which constituted 28% to 35% of the debtor's monthly net income). *In re Dempton*, 182 B.R. 38 (Bankr. W.D. Missouri 1995) (substantial abuse indicated when debtor spends \$2,191 per month on mortgage payments for a family of four); *United States Trustee v. Gavita (In re Gavita)*, 177 B.R. 43 (Bankr. W.D. Pa. 1994)(case dismissed for substantial abuse because debtors were living beyond their means, including spending \$780 for mortgage, taxes and insurance on a house for a family of three); *In re Dickerson*, 166 B.R. 480 (Bankr. N.D. Ga. 1993)(substantial abuse indicated where debtor was paying an unreasonable \$1,000 per month in rent to his girlfriend); *In re Buntin*, 161 B.R. 466 (W.D. Missouri 1993)(substantial abuse found in debtors' intent to increase housing costs from current \$350 to \$550 once discharge is obtained, which increase was reflected on Schedule J); *In re Vesnesky*, 115 B.R. 843 (W.D. Pa. 1990)(substantial abuse shown in part by debtors' allowing their \$351 per month house to go to foreclosure and then entering into a rental agreement with an option to purchase for another house at \$716.47 per month); *In re Cook*, 110 B.R. 544 (Bankr. N.D. Okl. 1990)(monthly "lodging" expenses of \$2,006.39 a factor in granting motion to dismiss under Section 707(b); *Wray v. United States Trustee (In re Wray)*, 136 B.R. 122 (Bankr. W.D. Pa. 1992)(\$722 per month on rent and utilities found to be one of several factors justifying dismissal under Section 707(b); but see, *In re Messenger*, 178 B.R. 145 (Bankr. N.D. Ohio 1995) (dismissal denied as debtors were not living beyond their means, including fact that debtors spent only \$472 per month on rent for two adults).

3 One argument that debtors make is that the Court should not or cannot order them to sell their house. The question, however, is not whether the Court can order the debtors to sell their house, but whether the Court can determine whether it would be a substantial abuse to grant a discharge to debtors who choose to spend more than a reasonable amount on more than adequate housing, instead of accepting adequate housing and directing the balance of the mortgage payments to the payment of creditors in a Chapter 13 plan. Therefore, a motion to dismiss does not ask the Court to order the debtors to sell their house. The motion merely asks that the Court dismiss the Chapter 7 case on the grounds that, as the cases cited above show, it would be a substantial abuse of Chapter 7 to grant a discharge to debtors who choose to spend more than a reasonable amount of their income on more than adequate housing instead of to the repayment of their creditors. If the house must be sold, that will be the decision of the debtors. *The relevant inquiry for the Court is not whether the house must be sold, but rather whether it is equitable to grant the debtors a discharge and thereby require the unsecured creditors to shoulder the entire burden of preserving the debtors' house.* Bankruptcy relief in any chapter is equitable relief, and an equitable relief of considerable benefit to debtors. As noted in *Krohn*, there is no Constitutional right to a discharge, 886 F.2d at 127, and the intent of Section 707(b) is to allow the bankruptcy court to deal equitably with Chapter 7 bankruptcy cases. 886 F.2d at 126. It would be inequitable to allow debtors to spend more than is reasonably necessary for adequate housing, and to also give the debtors a discharge of all their debt. That is all the Court need determine.

4 In a case that presents a slight variation, *In re Carpenter*, Case No. SG02-03415, the debtors were paying \$2,160 per month on a house they intended to reject; once the house were rejected the debtors would have \$1,165.18 per month in disposable income. The debtors converted to Chapter 13 before the motion to dismiss was heard.

PEOPLE AND CHANGES

CONGRATULATIONS TO JOHN PIGGINS AND JEFF MOYER ON BEING SELECTED AS THE NEW CHAPTER 7 TRUSTEE FOR KALAMAZOO AND GRAND RAPIDS, RESPECTIVELY.

MARCI MCIVOR, PHILLIP SHEFFERLY AND THOMAS TUCKER WERE SELECTED FOR THE THREE BANKRUPTCY JUDGE VACANCIES IN THE EASTERN DISTRICT OF MICHIGAN.

IF YOU HAVE SOME NEWS WHICH WOULD BE OF INTEREST TO THE BANKRUPTCY BAR, PLEASE E MAIL IT TO MMEOLI@AMERITECH.NET.

TECHNOLOGY TIPS. WE ARE STILL INTERESTED IN ANY IDEAS THAT YOU MIGHT HAVE, ESPECIALLY IF YOU THINK THAT BANKRUPTCY PRACTITIONERS DO NOT KNOW ABOUT IT.

STATISTICS

THE COURT WEBSITE PROVIDES STATISTICS ON THE NUMBER OF CASES FILED SINCE 1994 IN OUR DISTRICT.

2001: CHAPTER 7: 10,596 CHAPTER 13: 3,307 CHAPTER 11: 69 CHAPTER 12: 2 TOTAL: 13,974

THROUGH DECEMBER 12, 2002: CHAPTER 7: 10,885 CHAPTER 13: 3,412 CHAPTER 11: 59 CHAPTER 12: 3 TOTAL: 14,359

CLERK'S OFFICE ISSUES

CM/ECF Update

THE BANKRUPTCY COURT IS CONTINUING ITS' EFFORTS TOWARD THE FUTURE IMPLEMENTATION OF CASE MANAGEMENT/ELECTRONIC CASE FILING (CM/ECF). THERE ARE NUMEROUS TASKS CURRENTLY BEING UNDERTAKEN BY VARIOUS INDIVIDUALS AND COMMITTEES WHICH WILL NEED TO BE ACCOMPLISHED PRIOR TO GOING LIVE ON CM/ECF. THESE TASKS RANGE FROM: REDEFINING CURRENT PROCESS FLOWS (I.E.: ORDER PROCESSING, TIMELY ISSUANCE OF ORDERS OF DISCHARGE AND FINAL DECREES, QUALITY CONTROL OF IMAGES AND DATA, ETC.), COORDINATION WITH THE BANKRUPTCY NOTICING CENTER, DEVELOPING ADMINISTRATIVE PROCEDURES, REFINEMENT OF THE AUTOMATIC JUDGE/TRUSTEE/341 ASSIGNMENT MODULE, TO THE SUCCESSFUL CONVERSION OF EXISTING CASE DATA IN BANCAP TO CM/ECF. THE LIST SEEMS TO GO ON AND ON . . .

CM/ECF DIFFERS FROM BANCAP IN MANY WAYS — HOW ATTORNEY ADDRESSES ARE MAINTAINED IS ONE. UNLIKE BANCAP, IN CM AN ATTORNEY IS ONLY ALLOWED ONE ADDRESS PER LOGIN. FOR EXAMPLE, IF AN ATTORNEY PRACTICES IN TWO SEPARATE OFFICES AND WISHES TO HAVE THESE UNIQUE ADDRESSES REFLECTED, HE/SHE WILL NEED TO BE ISSUED TWO SEPARATE PASSWORDS & LOGINS (ONE FOR EACH ADDRESS). SINCE IN OUR COURT THIS IS THE EXCEPTION AND NOT THE RULE, EVERY ATTORNEY CURRENTLY APPEARING IN OUR DATA BASE WITH MORE THAN ONE ADDRESS REFLECTED (VIRTUALLY HUNDREDS) WILL NEED TO BE REVIEWED AND MANUALLY CORRECTED. SCOTT STEPHENSON, OUR AUTOMATION SPECIALIST IN MARQUETTE, IS WORKING ON THIS DAUNTING PROJECT. IN THE NEAR FUTURE HE WILL BE CORRESPONDING TO THOSE ATTORNEYS WITH MORE THAN ONE ADDRESS — INCLUDED WILL BE A LIST OF CASES ATTRIBUTED TO EACH OFFICE WITH INSTRUCTIONS ON HOW TO PROCEED. IF YOU HAVE ANY QUESTIONS OR BELIEVE YOUR ADDRESS IS OUTDATED, PLEASE DO NOT HESITATE TO CONTACT EITHER SCOTT (TELEPHONE: (906) 226-1562 OR E-MAIL: SCOTT.STEPHENSON@MIWB.USCOURTS.GOV) OR ME AT THE BELOW-REFERENCED TELEPHONE NUMBER OR E-MAIL ADDRESS.

THE BANKRUPTCY COURT HAS COMMENCED INTERNAL TRAINING FOR OUR STAFF IN VARIOUS ASPECTS OF CM. ONCE THE COURT IS LIVE ON CM (TARGET DATE OF SPRING, 2003), IT IS ANTICIPATED THAT WE WILL BEGIN ACCEPTING CASES AND PLEADINGS ELECTRONICALLY FROM ATTORNEYS AND TRUSTEES FOUR TO SIX WEEKS THEREAFTER. TRAINING FOR ATTORNEYS AND THEIR STAFF WOULD BEGIN SHORTLY AFTER WE GO LIVE INTERNALLY ON CM.

IF YOU HAVEN'T ALREADY, PLEASE VISIT OUR WEBSITE AT: WWW.MIWB.USCOURTS.GOV UNDER THE CM/ECF INFORMATION LINK. THERE YOU WILL FIND COMPUTER-BASED TRAINING MODULES TO ACQUAINT YOU WITH THE SYSTEM, A LIST OF REQUIREMENTS, PACER INFORMATION, LINKS TO OTHER COURTS ALREADY LIVE ON CM/ECF, ETC.

AGAIN, PLEASE DO NOT HESITATE TO CONTACT ME IF YOU HAVE ANY QUESTIONS OR COMMENTS.

Patrice Nichol, CM/ECF Project Manager
(616) 456-2013 Patrice_Nichol@miwb.uscourts.gov

REMEMBERING THE WARMTH OF SUMMER AT OUR SEMINAR.....



HERE ARE SOME OF OUR MEMBERS LOUNGING OUTSIDE THE HOTEL AT MACKANAC ISLAND.

PROVE THAT YOU TOO CAN RELAX AND READ SOMETHING MORE THAN BANKRUPTCY SCHEDULES. COME TO THE SUMMER SEMINAR THIS AUGUST!

BANKRUPTCY COURT, WESTERN DISTRICT OF MICHIGAN

IN RE: COMMONPOINT MORTGAGE CO., 283 BR 469 (BC WD MI 2002). THE BANKRUPTCY COURT CERTIFIED A CLASS PROOF OF CLAIM AFTER CONCLUDING THAT IT WOULD PRODUCE SIGNIFICANT BENEFITS. THE CLAIMANTS, INDIVIDUALS WHO REPRESENTED THOUSANDS OF PEOPLE WHO RECEIVED LOANS FROM THE DEBTOR, CLAIMED THE DEBTOR CHARGED VARIOUS EXCESSIVE AND HIDDEN FEES AND VIOLATED THE MICHIGAN CONSUMER PROTECTION ACT. THE DECISION PROVIDES AN EXCELLENT OUTLINE OF THE STANDARD FOR AND ISSUES SURROUNDING CLASS CERTIFICATION IN A BANKRUPTCY CASE.

BANKRUPTCY COURT, EASTERN DISTRICT OF MICHIGAN

IN RE: PALACE QUALITY SERVICES INDUSTRIES, INC., 283 BR 868 (BC ED MI 2002) (10/9/02, JEFFREY R. HUGHES). DETAILED OPINION GRANTING THE DEBTOR'S LESSOR AN ADMINISTRATIVE CLAIM FOR UNPAID POST PETITION RENTS AND LATE FEES UNDER 11 USC 503(b)(1), BUT NOT UNDER 11 USC 365(b)(10), AS CONTENDED BY LESSOR.

IN RE: TALON AUTOMOTIVE GROUP, INC., 284 BR 622 (BC ED MI 2002) (10/25/02, RHODES). DEBTOR'S FORMER EMPLOYEE FILED A MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND FROM THE INJUNCTION PROVISIONS OF THE CONFIRMED CHAPTER 11 PLAN. THE COURT DENIED BOTH REQUESTS, BUT RULED THAT THE FORMER EMPLOYEE'S CLAIM WAS NOT DISCHARGED UNDER 11 USC 524 BECAUSE THE DEBTOR KNEW OF HER CLAIM BUT DID NOT GIVE HER NOTICE OF THE BANKRUPTCY.

IN RE: NEW HAVEN FOUNDRY, INC., 285 BR 646 (BC ED MI 2002) (11/19/02, RHODES). THE COURT FOUND THAT THE MUTUALITY REQUIREMENT OF DEBTS OWED BETWEEN THE SAME PARTIES ACTING IN THE SAME CAPACITY WAS MET AND THEREFORE GRANTED THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PERMIT SET-OFF.

IN RE: WEIDMAN, 284 BR 837 (BC ED MI 2002) (10/25/02, RHODES). THE COURT SUSTAINED THE CHAPTER 7 TRUSTEE'S OBJECTION TO THE DEBTOR WIFE'S CLAIM OF EXEMPTION OF HER INTEREST IN AN ANNUITY UNDER 11 USC 522(d)(10)(E) BECAUSE HER RIGHT TO RECEIVE PAYMENTS WAS NOT CONDITIONAL UPON ANY OF THE FACTORS LISTED THERE.

DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN
BOYD V. SUPERIOR BANK, FSB ET AL (IN RE: LEWIS), 270 BR 215 (DC WD MI 2002) (9/27/92). THE BANKRUPTCY COURT CORRECTLY RULED THAT THE DEFENDANT BANK COULD NOT INVOKE EQUITABLE SUBROGATION TO DEFEAT THE CHAPTER 7 TRUSTEE'S POWER TO AVOID THE DEBTOR'S PREFERENTIAL TRANSFER OF REAL PROPERTY UNDER 11 USC 547(b), DUE TO THE LACK OF TWO CONDITIONS PRECEDENT.

U.S. TRUSTEE V. QUALITY STORES, INC. (IN RE: QUALITY STORES), ___ BR ___ (DC WD MI 2002) (10/8/02). THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE TERMS OF EMPLOYMENT FOR THE DEBTOR'S INVESTMENT BANKER, INCLUDING AN INDEMNIFICATION PROVISION, WERE REASONABLE UNDER THE CIRCUMSTANCES.

CORRADINI V. CORRADINI (IN RE: CORRADINI), 276 BR 571 (DC WD MI 2002) (11/26/02). THE BANKRUPTCY COURT DID NOT ERR IN DENYING THE PLAINTIFF THE OPPORTUNITY TO FILE AN AMENDED COMPLAINT BECAUSE THE PLAINTIFF FAILED TO ESTABLISH JUSTIFIABLE RELIANCE AND TO SATISFY THE SECOND AND THIRD PRONG OF THE REQUIREMENTS FOR AN EXCEPTION TO DISCHARGE UNDER 11 USC 523(a)(2)(A).

SIXTH CIRCUIT COURT OF APPEALS

ALT V. USA (IN RE: ALT), 305 F3d 413, 2002 FED APP 0343P (6TH CIR 2002). THE DISTRICT COURT PROPERLY AFFIRMED THE BANKRUPTCY COURT'S DISMISSAL OF THE DEBTOR'S CHAPTER 13 BANKRUPTCY PETITION ON THE GROUNDS THAT THE RECORD SHOWED HER PETITION WAS NOT BROUGHT IN GOOD FAITH. CHARACTERIZING THE DEBTOR'S BEHAVIOR AS "SHOCKING", THE BANKRUPTCY COURT DETERMINED THAT THE DEBTOR'S CONDUCT SHOWED THAT SHE DID NOT QUALIFY AS AN "HONEST, FORTHCOMING, TRUTHFUL AND FRANK" DEBTOR UNDER CHAPTER 13.

*THANK YOU TO DEAN RIETBERG FOR HIS WORK ON THESE SUMMARIES. ANY VIEWS THAT MIGHT BE EXPRESSED IN THESE CASE SUMMARIES ARE THE VIEWS OF THE AUTHOR AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE UNITED STATES TRUSTEE PROGRAM.

Bankruptcy Section Newsletter
January, 2003

Federal Bar Association, Bankruptcy Section
c/o Marcia R. Meoli
HANN PERSINGER, PC
503 Century Lane
Holland, Michigan 49423

Phone: (616) 396-1245
Fax: (616) 396-9638
E-mail: mmeoli@ameritech.net

Non-Profit Org.
U.S. POSTAGE
PAID
Holland MI 49423
Permit #66

**BANKRUPTCY
SECTION
STEERING
COMMITTEE:**

DAVID C. ANDERSEN
DAN E. BYLENGA, JR.
STEPHEN V. CARPENTER
DANIEL J. CASAMATTA
TIMOTHY J. CURTIN
MICHAEL W. DONOVAN
DANIEL R. KUBIAK
LORI L. PURKEY
STEVEN L. RAYMAN
MARCIA R. MEOLI, EDITOR
HAROLD E. NELSON, CHAIR ELECT
BRETT N. RODGERS
THOMAS P. SARB
PETER A. TEHOLIZ
MARY K. VIEGELAHN HAMLIN,
CHAIR
ROBB WARDROP, PAST CHAIR
NORM C. WITTE
ROBERT E. LEE WRIGHT

4/1

Peter A. Teholiz
5801 W Michigan Ave
PO Box 80857
Lansing MI 48908-0857



FBA STEERING COMMITTEE

THE FBA BANKRUPTCY STEERING COMMITTEE MET ON NOVEMBER 15, 2002. FIVE COMMITTEE SEATS EXPIRED THE SUMMER OF 2002. THE COMMITTEE ELECTED THE FOLLOWING INDIVIDUALS TO SERVE ON THE COMMITTEE FOR A THREE YEAR TERM: NORMAN WITTE, DANIEL CASAMATTA, LORI PURKEY, DANIEL BYLENGA AND MICHAEL DONOVAN. NORM AND DAN HAVE SERVED ON THE COMMITTEE FOR SEVERAL YEARS. THE COMMITTEE WELCOMES LORI, DAN AND MIKE AS NEW MEMBERS AND THANK THEM FOR DONATING THEIR "NON-BILLABLE" TIME TO THE COMMITTEE. ON BEHALF OF THE COMMITTEE WE LOOK FORWARD TO WORKING WITH YOU. THE NEXT STEERING COMMITTEE MEETING IS JANUARY 24, 2003 AT 12:00 P.M.. THE MEETING WILL BE HELD AT THE PENN CLUB IN GRAND RAPIDS. THESE MEETINGS ARE OPEN AND I ENCOURAGE ANYONE WHO IS INTERESTED TO ATTEND.

THE STEERING COMMITTEE HAS APPROVED A MID-WINTER EVENT. THIS EVENT WILL BE OPEN TO THE BANKRUPTCY BAR AND JUDGES. THE TENTATIVE DATE IS FEBRUARY 27, 2003 AT 5:00 P.M.. THIS EVENT WILL BE HELD AT THE PENN CLUB IN GRAND RAPIDS. PLEASE MARK YOUR CALENDARS AND INVITATIONS WILL BE MAILED SOON WITH THE DETAILS. IT HAS BEEN A FEW YEARS SINCE WE HAVE HELD THE MID-WINTER GATHERING BUT IT IS A GREAT OPPORTUNITY TO MEET OUR COLLEAGUES "OUTSIDE THE COURTROOM." FOR THOSE WHO HAVE NOT ATTENDED THIS EVENT IN THE PAST I WOULD ENCOURAGE YOU TO ATTEND.

THE 15TH ANNUAL BANKRUPTCY SEMINAR IS SCHEDULED FOR AUGUST 7 - 9, 2003 AT THE PARK PLACE HOTEL IN TRAVERSE CITY. HAL NELSON IS THE CHAIR OF THE SEMINAR COMMITTEE. THE THEME OF THE SEMINAR WILL BE "EAST MEETS WEST II." IT HAS BEEN SEVERAL YEARS SINCE THE FIRST "EAST MEETS WEST" SEMINAR WAS HELD AND IT WAS A GREAT SUCCESS. WITH THE EASTERN DISTRICT ANXIOUSLY AWAITING THE ARRIVAL OF TWO TO THREE NEW JUDGES IT SEEMED APPROPRIATE TO INVITE THE NEW JUDGES (HOPEFULLY, THEY WILL BE ON THE BENCH BY NEXT AUGUST) TO THE SEMINAR AND TO GET A FLAVOR FOR THE VARIATIONS OF PRACTICE BETWEEN THE EASTERN AND WESTERN DISTRICTS. THIS WILL BE A GREAT SEMINAR SO MARK YOUR CALENDARS NOW.

THE CURRENT MEMBERS OF THE FBA BANKRUPTCY STEERING COMMITTEE ARE SHOWN ON THIS PAGE.

IF YOU HAVE ANY SUGGESTIONS WHICH YOU BELIEVE THE COMMITTEE SHOULD CONSIDER PLEASE FEEL FREE TO CONTACT ANY COMMITTEE MEMBER. EACH OF THESE INDIVIDUALS GIVE THEIR TIME TO ATTEND THE MEETINGS, PROVIDE INPUT ON ISSUES THAT CONCERN THE BANKRUPTCY PRACTICE WITHIN OUR DISTRICT, ORGANIZE FUNCTIONS, ETC.

THE NEWSLETTER IS PROVIDED TO ALL MEMBERS OF THE FEDERAL BAR ASSOCIATION FOR THE WESTERN DISTRICT OF MICHIGAN. ARTICLES ARE VITAL TO THE NEWSLETTER AND IF YOU ARE INTERESTED IN SUBMITTING AN ARTICLE PLEASE CONTACT MARCIA MEOLI, EDITOR.

MARY K. VIEGELAHN HAMLIN, CHAIR